

PREVAILED

Roll Call No. \_\_\_\_\_

FAILED

Ayes \_\_\_\_\_

WITHDRAWN

Noes \_\_\_\_\_

RULED OUT OF ORDER

## HOUSE MOTION \_\_\_\_\_

MR. SPEAKER:

I move that Engrossed Senate Bill 45 be amended to read as follows:

- 1 Page 4, between lines 19 and 20, begin a new paragraph and insert:
- 2 "SECTION 4. IC 34-24-5 IS ADDED TO THE INDIANA CODE
- 3 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
- 4 JULY 1, 2007]:
- 5 **Chapter 5. Civil Action for Victims of Bias Crime Offenders**
- 6 **Sec. 1. As used in this chapter, "bias crime offender" means a**
- 7 **person:**
- 8 **(1) who:**
- 9 **(A) committed an offense that injured an individual; and**
- 10 **(B) knowingly or intentionally selected the individual as**
- 11 **the victim of the offense because of the color, creed,**
- 12 **disability, national origin, race, religion, sexual orientation,**
- 13 **gender identity, or sex of the individual; or**
- 14 **(2) who:**
- 15 **(A) committed an offense that damaged or otherwise**
- 16 **affected property; and**
- 17 **(B) knowingly or intentionally damaged or otherwise**
- 18 **affected the property because of the color, creed, disability,**
- 19 **national origin, race, religion, sexual orientation, gender**
- 20 **identity, or sex of the individual who owned or occupied**
- 21 **the property.**
- 22 **Sec. 2. If a person suffers a pecuniary loss because of the**
- 23 **commission of an offense by a bias crime offender, the person may**
- 24 **bring a civil action against the person that caused the loss.**

1       **Sec. 3. A person bringing an action under section 2 of this**  
 2 **chapter may seek to recover the following:**

- 3       **(1) Actual and consequential damages.**  
 4       **(2) Punitive damages in an amount not more than three (3)**  
 5 **times the person's actual damages.**  
 6       **(3) The costs of the action.**  
 7       **(4) Reasonable attorney's fees.**

8       **Sec. 4. A person may not recover damages under IC 34-24-3 and**  
 9 **this chapter for the same offense."**

10       Page 5, between lines 35 and 36, begin a new paragraph and insert:  
 11       "SECTION 7. IC 35-38-1-7.1, AS AMENDED BY P.L.213-2005,  
 12 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 13 JULY 1, 2007]: Sec. 7.1. (a) In determining what sentence to impose  
 14 for a crime, the court may consider the following aggravating  
 15 circumstances:

- 16       (1) The harm, injury, loss, or damage suffered by the victim of an  
 17 offense was:  
 18       (A) significant; and  
 19       (B) greater than the elements necessary to prove the  
 20 commission of the offense.  
 21       (2) The person has a history of criminal or delinquent behavior.  
 22       (3) The victim of the offense was less than twelve (12) years of  
 23 age or at least sixty-five (65) years of age at the time the person  
 24 committed the offense.  
 25       (4) The person:  
 26       (A) committed a crime of violence (IC 35-50-1-2); and  
 27       (B) knowingly committed the offense in the presence or within  
 28 hearing of an individual who:  
 29       (i) was less than eighteen (18) years of age at the time the  
 30 person committed the offense; and  
 31       (ii) is not the victim of the offense.  
 32       (5) The person violated a protective order issued against the  
 33 person under IC 34-26-5 (or IC 31-1-11.5, IC 34-26-2, or  
 34 IC 34-4-5.1 before their repeal), a workplace violence restraining  
 35 order issued against the person under IC 34-26-6, or a no contact  
 36 order issued against the person.  
 37       (6) The person has recently violated the conditions of any  
 38 probation, parole, pardon, community corrections placement, or  
 39 pretrial release granted to the person.  
 40       (7) The victim of the offense was mentally or physically infirm.  
 41       (8) The person was in a position having care, custody, or control  
 42 of the victim of the offense.  
 43       (9) The injury to or death of the victim of the offense was the  
 44 result of shaken baby syndrome (as defined in IC 16-41-40-2).  
 45       (10) The person threatened to harm the victim of the offense or a  
 46 witness if the victim or witness told anyone about the offense.

1 (11) The person:

2 (A) committed trafficking with an inmate under IC 35-44-3-9;  
3 and

4 (B) is an employee of the penal facility.

5 **(12) The person who committed the offense knowingly or**  
6 **intentionally:**

7 **(A) selected the individual who was injured by the offense;**  
8 **or**

9 **(B) damaged or otherwise affected property by the offense;**  
10 **because of the color, creed, disability, national origin, race,**  
11 **religion, sexual orientation, gender identity, sex, or any other**  
12 **characteristic or belief of the injured individual or of the**  
13 **owner or occupant of the property.**

14 (b) The court may consider the following factors as mitigating  
15 circumstances or as favoring suspending the sentence and imposing  
16 probation:

17 (1) The crime neither caused nor threatened serious harm to  
18 persons or property, or the person did not contemplate that it  
19 would do so.

20 (2) The crime was the result of circumstances unlikely to recur.

21 (3) The victim of the crime induced or facilitated the offense.

22 (4) There are substantial grounds tending to excuse or justify the  
23 crime, though failing to establish a defense.

24 (5) The person acted under strong provocation.

25 (6) The person has no history of delinquency or criminal activity,  
26 or the person has led a law-abiding life for a substantial period  
27 before commission of the crime.

28 (7) The person is likely to respond affirmatively to probation or  
29 short term imprisonment.

30 (8) The character and attitudes of the person indicate that the  
31 person is unlikely to commit another crime.

32 (9) The person has made or will make restitution to the victim of  
33 the crime for the injury, damage, or loss sustained.

34 (10) Imprisonment of the person will result in undue hardship to  
35 the person or the dependents of the person.

36 (11) The person was convicted of a crime involving the use of  
37 force against a person who had repeatedly inflicted physical or  
38 sexual abuse upon the convicted person and evidence shows that  
39 the convicted person suffered from the effects of battery as a  
40 result of the past course of conduct of the individual who is the  
41 victim of the crime for which the person was convicted.

42 (c) The criteria listed in subsections (a) and (b) do not limit the  
43 matters that the court may consider in determining the sentence.

44 (d) A court may impose any sentence that is:

45 (1) authorized by statute; and

46 (2) permissible under the Constitution of the State of Indiana;

1 regardless of the presence or absence of aggravating circumstances or  
2 mitigating circumstances."

3 Page 10, between lines 21 and 22, begin a new paragraph and insert:

4 "SECTION 13. [EFFECTIVE JULY 1, 2007] **(a) IC 34-24-5, as**  
5 **added by this act, applies only to causes of action that accrue after**  
6 **June 30, 2007.**

7 **(b) IC 35-38-1-7.1, as amended by this act, applies only to**  
8 **offenses committed after June 30, 2007."**

9 Renumber all SECTIONS consecutively.

(Reference is to ESB 45 as printed April 6, 2007.)

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Representative Porter